

STATE OF NORTH CAROLINA
COUNTY OF DURHAM

INTERLOCAL AGREEMENT - DURHAM CONVENTION CENTER (DCC INTERLOCAL)

This Contract is made and entered into on this _____ day of _____, 2014, by and between the City of Durham, a North Carolina municipal corporation (City), and the County of Durham, a political subdivision of the State of North Carolina (County). This Contract is an Interlocal Cooperative Agreement and is made pursuant to North Carolina General Statutes Part 1, Article 20, of Chapter Section 153A-164 (Joint Buildings), Section 160A-461 (Interlocal cooperation authorized), Section 160A-462 (Joint agencies) and Article 21, Section 160A-489 (Auditoriums, Coliseums and Convention Centers), and other applicable provisions of law. Collectively, the City and County are the "Parties."

Background and Purpose:

On October 9, 1987, the City and County entered into an agreement for Construction, Joint Ownership and Operation of the Durham Convention Center (DCC). This agreement was subsequently amended in June of 1988 and October of 1989, primarily to establish and define the duties of the Durham Convention Center Authority Board (Authority).

Now the City and the County desire to create a new interlocal agreement (DCC Interlocal) which will capture the relevant points of the previous agreement and further define the intent of both parties with regard to ownership and operation of the DCC. This new DCC Interlocal will supersede the prior agreement and become the predominant authoritative agreement between the parties regarding co-ownership and management of the Joint Venture (JV) known as the Durham Convention Center.

Section 1. Definitions:

- a. **Agreement:** The "Agreement" or "Contract" shall mean this Interlocal Agreement, together with all exhibits attached hereto (each of which are incorporated herein as an integral part of this Agreement).
- b. **Annual Capital Budget:** The itemized capital expenditure list for the Durham Convention Center prepared by the Facility Manager and approved by the City and County in conjunction with the annual operating budget.
- c. **Annual Operating Budget:** The line item budget for the operation of the Durham Convention Center prepared by the Facility Manager and approved by the City Council and County Commission that includes a projection of Revenues and Operating Expenses, shown on a monthly and annual basis.
- d. **Audit:** An audit by an accounting firm meeting with both the City and County's approval and

conducted in accordance with generally accepted auditing standards.

- e. **Capital Expenditure:** All expenditures for building additions, alterations, repairs or improvements and for purchases of additional or replacement furniture, machinery, or equipment, where the cost of such expenditure is greater than \$5,000 and the depreciable life of the applicable item is, according to generally accepted accounting principles, in excess of five (5) years.
- f. **Contract Administrator:** A person, named by the Governing Boards to act as their primary representative in the administration of the Agreement.
- g. **Facility:** The DCC as defined in the Recitals to this Agreement, including the Durham Convention Center and its plaza, as specified in Exhibit A.
- h. **Governing Boards:** The City Council and the County Commission, together.
- i. **Joint Venture (JV):** The operation of the DCC shall be as a joint venture of the City and the County, as described in [GASB 14](#), paragraph 69. There shall be joint control of the Joint Venture, and no single party shall have the ability to unilaterally control the financial or operating policies of the DCC.
- j. **Joint agencies (authorized by G.S 160A-462):** Units agreeing to an undertaking may establish a joint agency charged with any or all of the responsibility for the undertaking. The units may confer on the joint agency any power, duty, right, or function needed for the execution of the undertaking, except that legal title to all real property necessary to the undertaking shall be held by the participating units individually, or jointly as tenants in common, in such manner and proportion as they may determine. The participating units may appropriate funds to the joint agency on the basis of an annual budget recommended by the agency and submitted to the governing board of each unit for approval.
- k. **Public Authority as it relates to G.S. 159-7(b) (10):** “Public Authority” is a municipal corporation (other than a unit of local government) that is not subject to the State Budget Act (Chapter 143C of the General Statutes) or a local governmental authority, board, commission, council, or agency that (i) is not a municipal corporation, (ii) is not subject to the State Budget Act, and (iii) operates on an area, regional, or multi-unit basis, and the budgeting and accounting systems of which are not fully a part of the budgeting and accounting systems of a unit of local government.
- l. **Net Position:** Represents the difference between all other elements in a statement of financial position. It may be stated as net investment in capital assets; restricted (distinguishing between major categories of restrictions); and unrestricted as defined by GASB 63. For purposes of this agreement, Net Position will be unrestricted, meaning the net amount of the assets, deferred outflows of resources, liabilities, and deferred inflows of resources that are not included in the

determination of net investment in capital assets or the restricted component of net position.

Section 2. Joint Ownership: The City and County of Durham each hold title to a one-half undivided interest in the land and facilities of the DCC, including the related Plaza area, and each holds a one-half undivided interest in the JV.

Neither the City nor County shall convey any interest, legal or equitable, in the JV without the prior written consent of the other.

See Exhibit A, entitled, "Property Description of Durham Convention Center," which is hereby made part of this DCC Interlocal, and which includes the DCC Plaza. Also see Agreement of Lease between City of Durham, County of Durham and Durham Hotel Company, dated October 9, 1987 (Air Lease), as amended, on file with the Clerks of the City Council and County Commission.

Section 3. Personnel: The City and County Managers shall designate such personnel as may be necessary or desirable to carry out the responsibilities of the City and County, respectively, under this DCC Interlocal. The management of DCC operations will be handled by a vendor (Management Company) through a third party management contract (Management Agreement), unless the City and County together decide otherwise. The oversight of the Management Contract will be provided by a Contract Administrator. The Contract Administrator will be an employee of the City and represent the City and County on all matters related to the DCC/Joint Venture. The City or County Manager shall notify the Authority prior to the appointment of the Contract Administrator.

Section 4. Costs Borne Equally: As a general statement, and except as otherwise expressly provided to the contrary in this DCC Interlocal, it is the intention of the City and County to bear equally the costs of the JV and to share equally the revenues therefrom in the manner prescribed by this DCC Interlocal.

- a. All revenues and expenses related to or resulting from the powers, duties and activities of the JV or from the ownership, management, operation, maintenance or repair of the DCC shall be shared equally by the City and County.
- b. The Authority, working collectively with the Management Company, will develop annual operating and capital budgets. The capital budget is to include a specific list of capital needs. The Authority shall submit the proposed operating budget and the proposed capital budget to include the specific list of capital needs to the City and County early enough in the year to be included in the budgetary process of both entities.
- c. The City and the County shall each make an annual appropriation to the JV in an amount equal to one half of the projected operating deficit (if any) in the approved annual operating budget plus one half of the approved annual capital budget for capital expenditures (if any). If any fiscal year begins with total Net Position below \$500,000.00, then the City and the County shall each distribute one-twelfth (1/12) of their total annual appropriation to the JV on a monthly basis. At the end of each fiscal year, if the total Net Position exceeds \$500,000.00 due to favorable results relative to those budgeted, then any amounts in excess of \$500,000.00 shall be refunded one half each to the City and County, unless the City and County have agreed that the

Net Position should be higher in order to accumulate funds for future capital needs. If any fiscal year begins with the desired amount of Net Position, then the City and County shall only distribute funds to the JV at the end of the fiscal year and only in an amount necessary to bring the Net Position the desired level. If at any point during the fiscal year the Net Position declines below \$100,000.00, at that time the City and County shall begin distributing funds in a method agreed upon by both parties.

- d. The use of any accumulated net position shall be considered as part of the budget planning process. While a recommendation from the Authority is required, the actual decision about use of Net Position will be at the discretion of the Governing Boards. Net Position shall be used only for capital expenditures or unanticipated operating deficits that exceed the projected operating deficit (if any) during a fiscal year.
- e. Budgetary Flexibility: During any fiscal year the funds appropriated by the City and County shall be used only for their original stated purposes as it relates to the approved operating budget and the approved capital budget. Funds intended for operations shall not be used for capital or vice versa. However, funds may be shifted between specific capital needs upon administrative approval of both the City and County Managers provided the amount does not exceed \$20,000.00 per request and provided that the aggregate amount of the annual approved capital appropriation is not exceeded. If additional capital needs are identified during the fiscal year or actual cost of approved capital expenditures exceed the approved capital budget, then the Authority shall make written request for additional capital funding from the City and County. If such request is approved, the City and County shall determine whether use of net position, additional funding from the City and County, or an amendment reducing the operating budget and increasing the capital budget is most appropriate. Each jurisdiction shall obtain approval from its governing board, if required, to approve such request.
- f. Budgeting and Accounting Systems:
 - 1) The City shall maintain the financial books, records and activity of the JV independently of the City's and County's financial records.
 - 2) The financial books, records and activity of the JV will be accounted for and reported using the full accrual method in an Enterprise Fund.
 - 3) All fiscal activity of the JV will be reported on an independent Statement of Net Position, Statement of Revenues, Expenses, and Changes in Fund Net Position Statement of Cash Flows and supporting schedules.
 - 4) Financial statements shall be provided to the City, County and the Authority on a monthly and quarterly basis. Revenue generated by the Air Lease, as well as any other revenue and expense items charged to the JV which fall outside the revenue and expense items reported by the Management Company, shall also be reported on these statements.
 - 5) The fiscal year of the JV shall be the same as that of the City and County.
 - 6) The records of the Authority shall be subject to inspection and audit by the City or the County at any time.

- 7) The financial books and records of the JV, as maintained by the City, shall be audited or have an Agreed Upon Procedures performed by an independent CPA firm annually.

Section 5. The Durham Convention Center Authority Board: The City and County have established a joint agency, the Durham Civic Center Authority Board for the purpose of bipartisan oversight of the DCC's operation, maintenance and capital needs. It is not the intent of the City or County that the Authority Board be a public authority as that term is defined by G.S. 159-7(b)(10).

Appointment, powers and responsibilities of the Authority are defined as follows:

- a. *Membership; appointments; vacancies:* The Authority's Board of Directors consists of seven members. Three members and their successors shall be appointed by the City Council. Three members and their successors shall be appointed by the Board of County Commissioners. The seventh member shall be chosen by the six members appointed by the City Council and the County Commissioners. Each member shall serve a term of three years. Initial appointments by the Governing Boards, however, were for one, two and three year terms in order to provide for staggered terms, and the staggered terms established under the prior Interlocal for the DCC shall be carried on under this DCC Interlocal. No member may serve more than two consecutive three-year terms. Vacancies shall be filled for any unexpired term in the same manner as the original appointment was made. Any member may be removed by the Governing Body with or without cause. At least one of the members appointed by each of the City and County shall be a minority group member or minority person as those terms are defined in the respective MWBE ordinances of the City and County.
- b. *Election of Officers:* The members of the Authority shall elect annually a member of the Authority to serve as Chair. The position of Chair shall alternate between a member appointed by the City Council and a member appointed by the County Commission, except that the member selected by the other Board members can be elected as Chair. In that event, the Chair shall be succeeded by a member from among those who would have otherwise been eligible. In the same manner, the members of the Authority shall elect a Vice Chair. The members elected Chair and Vice Chair shall not have been appointed by the same governing board. In the event that the member selected by the other Board members is selected as Chair or Vice Chair, then the process of rotating the those offices between representatives of each governing board as described herein shall be suspended until completion of that person's term.
- c. *Powers and Duties:* The Authority shall have the following powers and duties:
 - 1) To conduct a review of rates for use of the DCC for various events and functions, and to review these on a periodic basis as the use of the facility warrants. To formulate, subject to review and approval by the City and County, policies and procedures for the operation and use of the DCC. It is the intention of the Governing Boards that these policies and procedures shall be such that the DCC is available for use by community groups at prevailing rates.

- 2) To oversee and evaluate performance of any management, catering or other contracts entered into by the Governing Boards pertaining to the operation, management or maintenance of the DCC.
- 3) Work with the Management Company or Contract Administrator to review the budgeted operating revenues, costs and capital expenditures comprising the budget of the DCC and the resulting contributions of the City and County.
- 4) To properly notify the City and County whenever it appears that the anticipated revenues stated in the annual operating budget will not be realized.
- 5) To review, evaluate and make recommendations to the Governing Boards regarding the annual financial audit report required under the Management Agreement.
- 6) To review, evaluate and make recommendations to the Governing Boards regarding the monthly financial statements required under the Management Agreement.
- 7) To review, evaluate and make recommendations to the Governing Boards regarding monthly reports, year-end statements and other financial reports prepared by the Management Company.
- 8) To review, evaluate and make recommendations to the Governing Boards regarding insurance coverage required of the Management Company by the Management Agreement.
- 9) To perform such other duties as may be required and to exercise such other authority as may be conferred by joint resolution of the City and County.

Section 6. Contract Not Divisible: This DCC Interlocal is not divisible. The obligations exchanged by the City and County under each part of this Contract constitute consideration for each and every part of this Contract.

Section 7. Fire or Casualty Loss: In the event the DCC is destroyed in whole or in part, it is agreed that the proceeds from any insurance policy received in payment of any such loss shall be applied to the repair and reconstruction of the DCC, unless the City and County shall agree, to the extent permitted by this DCC Interlocal, that some other disposition of such proceeds shall be made.

Section 8. Duration of Contract: The term of this DCC Interlocal shall begin on the date of execution, and shall expire coincidentally with the expiration or termination of the Air Lease.

Section 9. Amendments: This Contract may be amended by the City and County at any time by execution of a written agreement upon approval of such amendment by Governing Boards of the City and County.

Section 10. Termination: This Contract may only be terminated by written agreement of the City and County, but not otherwise.

The parties having reached an agreement, this DCC Interlocal is executed by the City and County on the date first recited by the following officials whose signatures have been duly authorized by the Governing Boards of the City and County respectively.

CITY OF DURHAM

ATTEST:

_____ Clerk

By: _____

_____ City Manager

COUNTY OF DURHAM

ATTEST:

_____ Clerk

By: _____

_____ County Manager

NORTH CAROLINA

ACKNOWLEDGMENT BY
CITY OF DURHAM

COUNTY of _____

I, a Notary Public in and for the aforesaid County and State certify that

_____ personally appeared before me this day,
and acknowledged that he or she is the _____ City Clerk of the City of Durham, a
municipal corporation, and that by authority duly given and as the act of the City, the foregoing
interlocal agreement was signed in its corporate name by its _____ City Manager, sealed
with its corporate seal, and attested by its said City Clerk or Deputy City Clerk. This the _____ day
of _____, 20 _____

Notary Public

My commission expires:

Exhibit A

Property Description of Durham Convention Center

Beginning at an iron pipe located at the intersection of the northern boundary of the right-of-way of Chapel Hill Street and the western boundary of the right-of-way of Foster Street; running thence along and with the northern boundary of the right-of-way of Chapel Hill street North 88 degrees 52 minutes 45 seconds West 205.31 feet to an iron pipe at the intersection of the northern boundary of the right-of-way of Chapel Hill Street and the former eastern boundary of the right-of-way of Roney Street (said street now being closed); running thence South 89 degrees 12 minutes 01 second West a distance of 60.87 feet to an "x" chiseled in the sidewalk located at the intersection of the northern boundary of the right-of-way of Chapel Hill Street and the former western boundary of the right-of-way of Roney Street; running thence along and with the northern boundary of the right-of-way of Chapel Hill Street North 89 degrees 38 minutes 03 seconds West 172.72 feet to an existing P.K. nail, said P.K. nail being a control corner having N.C. State plane coordinates of $N(y) = 817,753.58$ and $E(x) = 2,028,530.58$; thence leaving the boundary of the right-of-way of Chapel Hill Street and running North 00 degrees 18 minutes 58 seconds East 179.94 feet to an iron pipe located within the former right-of-way of Manning Place; running thence North 89 degrees 58 minutes 56 seconds East 150.41 feet to an iron pipe, running thence North 0 degrees 11 minutes 27 seconds East 55.60 feet to an iron pipe; running thence South 89 degrees 48 minutes 33 seconds East 19.83 feet to an iron pipe; running thence North 00 degrees 11 minutes 27 seconds East 134.76 feet to an iron pipe in the southern boundary of the right-of-way of Morgan Street South 89 degrees 39 minutes, 29 seconds East 29.15 feet to an iron pipe located at the intersection of the former western boundary of the right-of-way of Roney Street and the southern boundary of the right-of-way of Morgan Street; running thence South 89 degrees 54 minutes 22 seconds East 60.59 feet to a P.K. nail located at the intersection of the former eastern boundary of the right-of-way of Roney Street and the southern boundary of the right-of-way of Morgan Street; running thence along and with the southern boundary of the right-of-way of Morgan Street South 89 degrees 39 minutes 33 seconds East 183.25 feet to an iron pipe located at the intersection of the southern boundary of the right-of-way of Morgan Street and the western boundary of the right-of-way of Foster Street; running thence along and with the western boundary of the right-of-way of Foster Street South 00 degrees 55 minutes 17 seconds West 373.22 feet to an iron pipe being the point and place of BEGINNING and containing 3.04 acres more or less as shown of the plat and survey entitled "Property of City of Durham", as prepared by Deward W. Baker & Associates, recorded in Plat Book 115, Page 173, Durham County Registry; to said plat and survey reference is hereby made for a more particular description of same. Note: The rights-of-way of Morgan Street, Foster Street and Chapel Hill Street, and the former rights-of-way of Manning Place and Roney Street vary in width.

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